

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 34088 of 2007(G)

AGAINST THE ORDER DATED 05/06/2007 IN IA 1309 & 1310/2007 IN
OPELE.146/2005 of PRL.M.C.KOZHIKODE-I

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PETITIONER:

HASSAN SHAH POOMAKOTH,
AGED 56 YEARS, S/O MOOSA, VALUVIL HOUSE,
KARANNUR, ERANHIKKAL P.O., KOZHIKODE.

BY ADV. SRI.JESWIN P.VARGHESE

RESPONDENTS:

1. K.SUNILKUMAR,
AGED 39 YEARS, S/O KANARAN,
VAYALIL HOUSE, ELATHUR P.O.,
KOZHIKODE.
2. BALAN, AGED 73 YEARS,
S/O CHATHUKUTTY, 'BALAPRABHA',
THAIVALAPPIL HOUSE, ELATHUR P.O.,
KOZHIKODE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34088 of 2007

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Dated this the 19th day of November, 2007.

JUDGMENT

This Writ Petition is filed against the order of the Principal Munsiff-I, Kozhikode in I.A.No.1310 of 2007 in E.O.P.No.146 of 2005. It was an application filed by the petitioner in the election petition under Section 151 of C.P.C. for an order to pick out the votes cast by persons from the used ballot papers produced before the court and mentioned in schedule A and B of election petition and also to declare that those votes are null and void. The court on a consideration of the materials prima facie found thus: "I have already found that the same persons have cast their votes in two booths and then only question remains whether the double voting has taken place." Earlier, this court had again directed in W.P.(C) No.19354 of 2007 thus: "Therefore, the court below is directed to consider that aspect and if it is satisfied that the materials available before the court that the name of a person figures in two booths and the identity of the person is the

same then the court may call for the documents which it has sought to summon in this case." These precautions are taken in order to preserve the secrecy of democratic process. But when the election petition is filed on the ground of double voting and when the Election Tribunal is satisfied that the name of person figures in two wards and that identity of the person is the same, then in order to find out the last ingredient of double voting it is absolutely necessary to compare the counter foils as well as the ballot papers to arrive at a decision whether the person has cast two votes in the same election in two wards, which according to law is void.

2. Therefore, at this stage, I cannot interfere with prima facie the satisfaction of the court below, especially under Article 227 jurisdiction and therefore, I dismiss the Writ Petition. Needless to say that when the election petition is ultimately argued all the points can be argued by the parties in support of their respective contentions.

M.N.Krishnan,
Judge.

ess 19/11

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